

CITY COUNCIL RESOLUTION NO. 102-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND PROVIDING FOR THE ISSUANCE OF ONE OR MORE SERIES OF CITY OF RICHMOND TAXABLE PENSION OBLIGATION REFUNDING BONDS, APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE AND AUTHORIZING THE EXECUTION, AMENDMENT AND/OR TERMINATION OF INTEREST RATE SWAP AGREEMENTS RELATED TO THE SERIES 2005 BONDS, AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City Council (the “Council”) of the City of Richmond (the “City”) adopted a retirement plan for certain employees pursuant to the Public Employees’ Retirement Law, commencing with Section 20000 of the Government Code of the State of California, as amended (the “Retirement Law”); and

WHEREAS, the Retirement Law obligates the City to amortize the unfunded accrued actuarial liability to the California Public Employees’ Retirement System, including any successor system established by the State of California, (the “System”), with respect to pension benefits for its employees; and

WHEREAS, the obligation of the City to pay its unfunded accrued actuarial liability to the System (the “PERS Obligation”) is evidenced by a contract between the City and the System, dated on or around January 1, 1954, as amended thereafter from time to time (collectively, the “PERS Contract”); and

WHEREAS, on March 30, 2005, the City, acting pursuant to the provisions of Section 860 et seq. of the California Code of Civil Procedure and Government Code Sections 53511 and 53589.5, filed a complaint in the Superior Court of the State of California for the County of Contra Costa seeking judicial validation of the proceedings and transactions relating to the issuance of certain pension funding bonds and any future series of bonds to be issued by the City in connection therewith and on May 31, 2005, the court entered a default judgment to the effect, among other things, that the City’s proposed pension funding bonds are valid, legal and binding obligations of the City and in conformity with all applicable provisions of law; and

WHEREAS, for the purpose of refunding the City’s obligations to the System evidenced by the PERS Contract, the City duly issued its City of Richmond Taxable Pension Funding Bonds, Series 2005A (the “Series 2005A Bonds”), its City of Richmond Taxable Pension Funding Bonds, Series 2005B-1 (the “Series 2005B-1 Bonds”) and its City of Richmond Taxable Pension Funding Bonds, Series 2005B-2 (the “Series 2005B-2 Bonds” and, together with the Series 2005A Bonds and the Series 2005B-1 Bonds, the “Series 2005 Bonds”) under Articles 10 and 11 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California and that certain Indenture, dated as of November 1, 2005 (the “Master Indenture”), by and between the City and the MUFJ Union Bank, N.A., formerly known as Union Bank of California, N.A., as trustee (the “Trustee”), in the form and manner provided in the Master Indenture; and

WHEREAS, in connection with the issuance of the Series 2005 bonds, the City executed a letter of instruction, dated August 1, 2013, as acknowledged and received by the Auditor-Controller of the County of Contra Costa and the Trustee (the “Letter of Instruction”), superseding certain prior letters of instruction, including such letters dated November 9, 2005 and May 4, 2006, respectively, providing for the annual set aside of debt service on the outstanding Series 2005 Bonds; and

WHEREAS, the Series 2005A Bonds matured on August 1, 2013 and are no longer outstanding under the Master Indenture; and

WHEREAS, the outstanding Series 2005 Bonds currently bear, or will bear, interest at certain variable interests rates pursuant to the terms of the Master Indenture; and

WHEREAS, Section 5922 of the California Government Code (hereafter, “Section 5922”) provides that in connection with, or incidental to, the issuance or carrying of bonds any public entity may enter into any contracts which the public entity determines to be appropriate to place the obligations represented by the bonds, in whole or in part, on the interest rate, cash flow or other basis desired by the public entity, including without limitation contracts commonly known as interest rate swap agreements, forward payment conversion agreements or contracts providing for payments based on levels of, or changes in, interest rates or stock or other indices, or contracts to exchange cash flows or a series of payments, in each case to hedge payment, rate, spread or similar exposure; and

WHEREAS, in connection with the issuance of the Series 2005 Bonds and in conformance with Section 5922, the City and Bear Stearns Capital Markets, Inc., as counterparty (hereafter, “Bear Stearns”) entered into an ISDA Master Agreement and related Schedule, Credit Support Annex and Confirmations, each dated as of November 7, 2007 (collectively, the “2007 Swap Agreement “); and

WHEREAS, Bear Stearns thereafter assigned its rights under the 2007 Swap Agreement to JPMorgan Chase Bank, N.A., as assignee (the “Assignee” or “Counterparty”) pursuant to an Assignment Agreement, dated as of August 1, 2013, by and among Bear Stearns, the City and the Assignee; and

WHEREAS, as a result of rating action taken on August 4, 2015 by Moody’s Investors Service, Inc., the Counterparty has the option to terminate the 2007 Swap Agreement, which would result in the City owing a termination payment to the Counterparty pursuant to the terms of the 2007 Swap Agreement; however, as of this date, the Counterparty has not elected to so terminate the 2007 Swap Agreement, but has reserved all of its rights to do so; and

WHEREAS, the City has previously adopted a set of standard policies governing certain financial transactions designed to reduce interest rate risk or lower overall borrowing costs set forth in the City of Richmond Swap Policy (the “Swap Policy”); and

WHEREAS, the City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to issue its City of Richmond Taxable Pension Obligation Refunding Bonds, Series 2015 in one or more series (collectively, the “Refunding Bonds”) as Additional Bonds (as such term is defined under the Master Indenture) pursuant to a First Supplemental Indenture, dated as of December 1, 2015 (the “First Supplemental Indenture” and together with the Master Indenture, the “Indenture”), by and between the City and the Trustee, supplementing and amending the Master Indenture for the purpose of (a) refunding a portion of the outstanding Series 2005 Bonds (such portion of the Series 2005 Bonds as may be refunded hereinafter the “Refunded Bonds”), (b) paying all costs incidental to or connected thereto, including making certain payments in connection with the amendment and/or termination of the 2007 Swap Agreement; and

WHEREAS, the amendment and/or termination of the 2007 Swap Agreement together with any agreements, schedules, confirmations and certificates related thereto, all in compliance with the Swap Policy and Section 5922, and/or entering into a replacement swap agreement is necessary in order to provide marketable Refunding Bonds for sale by the underwriter and to reduce the City’s interest rate risk in connection with the carrying of the remaining outstanding Series 2005 Bonds; and

WHEREAS, the execution and delivery of a replacement swap agreement is designed to reduce the interest rate risk associated with unhedged Series 2005 Bonds that bear or will bear interest at a variable rate; and

WHEREAS, this Council now desires to authorize and direct the execution of certain documents, the issuance of the Refunding Bonds, the amendment and/or termination of the 2007 Swap Agreement, and the execution and delivery of one or more replacement swap agreements; and

WHEREAS, there has been presented to this meeting a proposed form of First Supplemental Indenture providing for the issuance of the Refunding Bonds; and

WHEREAS, the City has full legal right, power and authority under the Constitution and the laws of the State of California to enter into the transactions hereinafter authorized;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Richmond, as follows:

Section 1. The foregoing recitals are true and correct and this Council hereby so finds and determines.

Section 2. The Council hereby finds and declares that the issuance of the Refunding Bonds to refund a portion of the outstanding Series 2005 Bonds, together with the payment of all costs incidental to or connected therewith, including certain payments in connection with the amendment and/or termination of the 2007 Swap Agreement, and the other actions contemplated hereby, including entering into a swap agreement to replace the 2007 Swap Agreement, are in the best interests of the City.

Section 3. The Council hereby authorizes and approves the issuance of the Refunding Bonds as Additional Bonds under the Master Indenture in one or more series, and the Council hereby authorizes and directs the Director of Finance of the City (the "Director of Finance") to execute the Refunding Bonds and the City Clerk of the City (the "City Clerk") to affix and attest the seal of the City thereto and to cause the Refunding Bonds to be authenticated and delivered in accordance with the Indenture; provided, that the aggregate principal amount of the Refunding Bonds (which in no event shall exceed forty million dollars (\$40,000,000) net of the original issue discount (if any) on the Refunding Bonds) shall not exceed the sum of the unpaid principal amount of the Refunding Bonds plus the underwriters' discount on the Refunding Bonds and plus the original issue discount (if any) on the Refunding Bonds and plus the costs of issuance of the Refunding Bonds (including any bond insurance premiums and administrative costs related to the Refunding Bonds, and the costs related to the amendment, termination and/or replacement of the 2007 Swap Agreement, all of which shall be paid from the proceeds of the Refunding Bonds); and provided further, that the Refunding Bonds shall be issued as fixed rate bonds and the true interest cost of the Refunding Bonds shall not exceed twelve per cent (12%) per annum; and provided further, that the Refunding Bonds shall mature not later than thirty (30) years from their date of issuance. The Refunding Bonds shall be in substantially the form set forth in the First Supplemental Indenture, with such changes therein, deletions therefrom and additions thereto as the Director of Finance shall approve as provided herein, such approval to be conclusively evidenced by the execution and delivery of the Refunding Bonds. The Refunding Bonds may (as determined by the Director of Finance) be sold by negotiated sale or in a private placement in each case on such terms to be finally determined in consultation with the city's financial advisor and swap advisor, and set forth in a bond purchase agreement between the City and the underwriter or purchaser, as the case may be; provided that the underwriter's or purchaser's discount for the sale of the Refunding Bonds shall not be in excess of 0.75% of the par value of the Refunding Bonds (exclusive of reasonable underwriting expenses) in the case of a negotiated sale, and the placement agent fee shall not exceed the amount of 0.50% of the par value of the Refunding Bonds in the case of a placement or direct purchase. The obligation of the City under the Refunding Bonds is exempt from the debt limitations of the California Constitution because the Refunding Bonds represent obligations imposed by law on the City to fund its pension plans and the City is obligated to satisfy its obligations under the Refunding Bonds from any lawfully available funds of the City.

Section 4. The City is hereby authorized to enter into one or more Supplemental Indentures with the Trustee, and the Director of Finance is hereby authorized and directed to execute and deliver such Supplemental Indentures on behalf of the City, which shall be in substantially the form of the First Supplemental Indenture presented to this meeting, with such changes therein, deletions therefrom and additions thereto as the Director of Finance shall approve (but consistent with the authority granted to the Director of Finance in Section 3 hereof) in consultation with the City Attorney ("City Attorney") and Orrick, Herrington & Sutcliffe LLP, Bond Counsel for the Refunding Bonds ("Bond Counsel"), which such approval shall be conclusively evidenced by the execution and delivery of such Supplemental Indentures, and the City Clerk is authorized and directed to affix and attest the seal of the City thereto.

Section 5. The Council hereby determines pursuant to Section 5922 that the amendment or amendment and partial termination of the 2007 Swap Agreement, and the execution and delivery of a replacement swap agreement if the 2007 Swap Agreement is partially terminated, are each designed to reduce the interest rate risk associated with the carrying of the Series 2005 Bonds.

Section 6. The amendment and/or termination of the 2007 Swap Agreement is hereby approved. The Director of Finance is hereby authorized and directed, acting singly, for and in the name and on behalf of the City, to negotiate such amendment and/or termination of the 2007 Swap Agreement with the Counterparty, and such officer is hereby authorized to execute and deliver such amendment and/or termination in consultation with the City's swap advisor and Bond Counsel; provided, however, that such officer shall not execute and deliver any amendment of the 2007 Swap Agreement unless: (a) such amended agreement is designed (i) to reduce or hedge the amount or duration of any payment, interest rate, spread or similar risk associated with the remaining outstanding Series 2005 Bonds; (b) the term of any such amended 2007 Swap Agreement does not exceed the final maturity of the remaining outstanding Series 2005 Bonds; (c) the initial notional amount of such amended 2007 Swap Agreement does not exceed the outstanding principal amount of the remaining outstanding Series 2005 Bonds; (d) the amounts payable by the City with respect to such amended 2007 Swap Agreement shall be payable solely and exclusively from Subordinate Pension Tax Override Revenues (as defined in the Indenture), or other lawfully available funds of the City; and (e) such amended 2007 Swap Agreement conforms with the Swap Policy.

Section 7. The City Council hereby authorizes the Director of Finance to execute and deliver a replacement swap agreement in the case that the 2007 Swap Agreement is wholly or partially terminated, and the Director of Finance is hereby authorized and directed, acting singly, for and in the name and on behalf of the City, to enter into a replacement swap agreement with such counterparty as may be chosen in consultation with the City's swap advisor in a notional amount not exceeding the principal amount of the outstanding unhedged Series 2005 Bonds; provided, however, that such officer shall not execute and deliver any replacement swap agreement unless: (a) such agreement is designed to reduce or hedge the amount or duration of any payment, interest rate, spread or similar risk when used in combination with the unhedged outstanding Series 2005 Bonds; (b) the term of such replacement swap agreement does not exceed the final maturity of the unhedged outstanding Series 2005 Bonds; (c) the initial notional amount of such replacement swap agreement does not exceed the outstanding principal amount of the unhedged outstanding Series 2005 Bonds; (d) the amounts payable by the City with respect to such replacement swap agreement shall be payable solely and exclusively from Subordinate Pension Tax Override Revenues (as defined in the Indenture), or other lawfully available funds of the City; (e) the Director of Finance determines that the termination risk associated with such replacement swap agreement is acceptable to the City, such finding to be conclusively evidenced by the execution and delivery of such replacement swap agreement, and (f) such replacement swap agreement conforms with the Swap Policy.

Section 8. In the event the Council fails or neglects to make appropriations for transfer in respect of its obligation to pay the Refunding Bonds, the 2007 Swap Agreement, or any replacement swap agreement executed or delivered pursuant hereto, the Director of Finance is hereby authorized and directed, pursuant to the Retirement Law, to transfer from any money lawfully available in any fund of the City amounts necessary to make such payments, and this resolution shall constitute a continuing appropriation by the Council for such payments.

Section 9. The officers and agents of the City are, and each of them hereby is, authorized and directed to do any and all things and to execute and deliver any and all documents which they or any of them deem necessary or advisable in order to consummate the transactions contemplated by this resolution, the Indenture, the Refunding Bonds, the amendment and/or termination of the 2007 Swap Agreement and any replacement swap agreement the Director of Finance may execute and deliver, and otherwise to carry out, give effect to and comply with the terms and intent of this

resolution, and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 10. The City Council wishes to hereby appoint RBC Capital Markets, LLC as underwriter, Orrick, Herrington & Sutcliffe LLP as Bond Counsel, Schiff Hardin LLP as disclosure counsel, The Majors Group as swap advisor, and Public Resources Advisory Group as financial advisor, all in connection with the issuance and sale of the Refunding Bonds and any transactions necessary or incidental thereto.

Section 11. The officers and agents of the City are, and each of them hereby is, authorized and directed to do any and all things and to execute and deliver any and all documents which they or any of them deem necessary or advisable in order to consummate the sale of the Refunding Bonds, including, but not limited to, the execution of an amendment to the Letter of Instruction or a new letter of instruction with the County with respect to the payment of the Refunding Bonds, the execution of such documents and certificates related to the amendment and/or termination of the 2007 Swap Agreement or the execution and delivery of any replacement swap agreement, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which the City has approved in this Resolution. The Director of Finance, in consultation with the City Manager of the City (the "City Manager"), may also execute, amend, terminate or replace any agreement it has or may enter into with any underwriter or purchaser, and may appoint, terminate or replace any underwriter or purchaser in connection with the sale of the Refunding Bonds, all as the Director of Finance may deem in the best interests of the City. All actions heretofore taken by the officers and agents of the City with respect to the sale, execution and delivery of the Refunding Bonds, and the other transactions authorized and contemplated herein are hereby approved, confirmed and ratified. Notwithstanding any provision of this resolution authorizing the Director of Finance to take any action or execute any document to the contrary, in the absence of the Director of Finance or in lieu of such Director of Finance, the person designated in writing by the Director of Finance or the City Manager, may take such action or execute such document with like effect as fully as though named in this resolution instead of the Director of Finance.

Section 12. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the transaction, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents or additional confirmations, settlements or revisions, may be given or taken, without further authorization by this Council, by the Director of Finance and each such officer is hereby authorized and directed to give any such consent, approval, notice, order or request and to take any such action which such officers may deem necessary or desirable to further the purposes of this Resolution.

Section 13. This resolution shall take effect immediately upon its passage.

I CERTIFY that the foregoing resolution was adopted at a regular meeting of the City Council on October 6, 2015, by the following vote:

AYES: Councilmembers Bates, Beckles, Martinez, McLaughlin, Vice Mayor Myrick, and Mayor Butt.

NOES: None.

ABSTENTIONS: Councilmember Pimplé.

ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

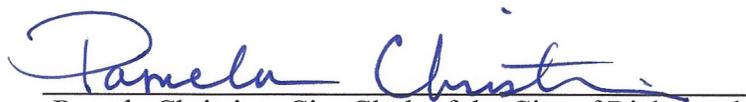
TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 102-15**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on October 6, 2015.


Pamela Christian, City Clerk of the City of Richmond

CLERK'S CERTIFICATE

I, Pamela Christian, City Clerk of the City of Richmond, do hereby certify as follows:

The foregoing resolution is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of said City duly and regularly held at the meeting place thereof on October 6, 2015, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present; and that at said meeting said resolution was adopted by the following vote:

- AYES: Councilmembers Bates, Beckles, Martinez, McLaughlin, Vice Mayor Myrick, and Mayor Butt.
- NOES: None.
- ABSTENTIONS: Councilmember Pimplé.
- ABSENT: None.

An agenda of said meeting was posted before said meeting at City Hall, 450 Civic Center Plaza, Richmond, California, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

Dated: October 15, 2015.


Pamela Christian
City Clerk of the City of Richmond

[SEAL]